

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 13-PM-15317-PEM (S207478)
)	
DAVID JOSEPH CARRIERE)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION; DISCIPLINE
Member No. 178002)	RECOMMENDATION; INVOLUNTARY
)	INACTIVE ENROLLMENT ORDER.
A Member of the State Bar.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent David Joseph Carriere did not participate in this proceeding although he was properly served with the motion to revoke probation by certified mail, return receipt requested, and by regular mail at his State Bar membership records address.

On March 7, 2013, the California Supreme Court filed an order, S207478, accepting the State Bar Court's discipline recommendation, including specified probation conditions, in case no. 12-H-13453. It became effective on April 6, 2013 (Rule 9.18(a), California Rules of Court) and was properly served on respondent.¹ A copy of the stipulation and the State Bar Court's order approving same had previously been properly served on respondent's counsel on October 26, 2012.

¹In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

On March 29 and July 1, 2013, the Office of Probation sent respondent reminder letters regarding the probation conditions, among other things, at his official address. Neither was returned as undeliverable or for any other reason.

On August 8, 2013, the Office of Probation called respondent at his State Bar membership records telephone number and left a message regarding his noncompliance with probation conditions, referral for probation revocation proceedings and instructions to call if he had any questions. Through September 13, 2013, there has been no contact from respondent.

The court finds by a preponderance of the evidence pursuant to Business and Professions Code section 6093, subdivisions (b) and (c) and rule 5.311, Rules Proc. of State Bar,² that respondent did not comply with the following probation conditions:

(a) Contacting the Office of Probation within 30 days of the effective date of discipline, that is, by May 6, 2013. He did not make contact or have a meeting with the Office of Probation; and

(b) During the period of probation, submitting a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report).

Respondent did not submit the quarterly report due on July 10, 2013.

AGGRAVATING AND MITIGATING FACTORS

Respondent has two prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ std. 1.2(b)(i).) A public reproof was issued effective

² Future references to section and rule are to the Business and Professions Code and Rules of Professional Conduct, respectively.

³ Future references to standard or std. are to this source.

August 4, 2010, for 2009 criminal convictions of violating Penal Code sections 243(e)(1) (battery on a cohabitant) and 417(a)(1) (brandishing a deadly weapon), one count each. (State Bar Court case no. 08-O-14125.⁴) There were no aggravating factors. Mitigating factors were candor and cooperation, severe financial stress and family problems.

Moreover, in Supreme Court order no. 207478 (State Bar Court case no. 12-H-13453), filed March 7, 2012, discipline was imposed consisting of one year's stayed suspension and two years' probation for respondent's noncompliance with a condition of the public reproof, namely successful completion of the Multistate Professional Responsibility Examination and providing proof thereof to the Office of Probation within one year of the effective date of the reproof. A prior disciplinary record was the aggravating circumstance. There were no mitigating factors.

Respondent and the State Bar stipulated to facts, legal conclusions and disposition in both prior disciplinary matters.

Respondent significantly harmed the administration of justice as his noncompliance with the probation conditions made it more difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Further, he demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying despite reminders from the Office of Probation. (Std. 1.2(b)(v).)

It is respondent's burden to establish mitigating factors, but, since he did not participate in this proceeding, none is found.

DISCUSSION

The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of the misconduct and the efforts to comply

⁴ The Office of Probation request for judicial notice of these records is granted.

with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Having considered these factors and the Office of Probation's contentions, the court believes that actual suspension for one year is sufficient to protect the public in this instance. Respondent was aware of the terms and conditions of his disciplinary probation, yet did not comply with them despite a reminder from Office of Probation. Accordingly, the motion to revoke probation is GRANTED.

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent David Joseph Carriere, previously ordered in Supreme Court case matter S207478 (State Bar Court case no.12-H-13453), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent is suspended from the practice of law for one year.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.⁵

Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

⁵Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

It is not recommended that respondent be ordered to successfully complete the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court order S207478 (State Bar Court case no. 12-H-13453).

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

IT IS THEREFORE ORDERED that respondent David Joseph Carriere be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: November ____, 2013

PAT McELROY
Judge of the State Bar Court

